

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHTONE DESIGN GROUP, LLC,

Plaintiff/Counter-Defendant,

- against -

Mary Sullivan KELLY and TRUE PILATES
BOSTON, LLC,

Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs,

- against -

RICHTONE DESIGN GROUP, LLC,

Counterclaim Defendant,

and

Sean GALLAGHER,

Third-Party Defendant.

Case No. 22-cv-1606-KMK

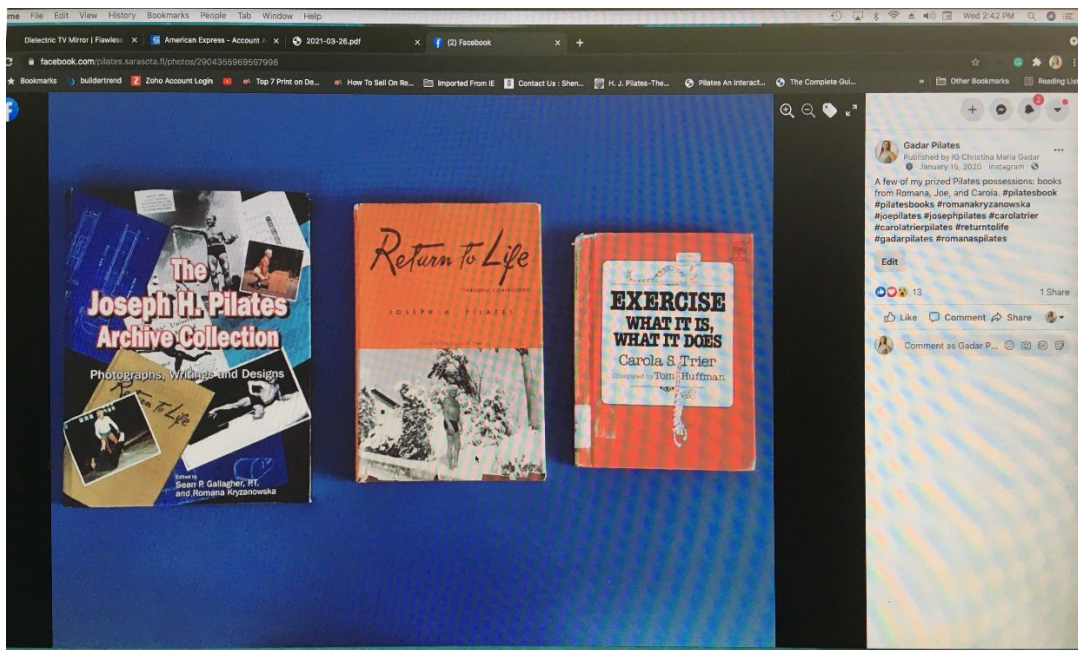
Declaration of Christina Maria Gadar

Christina Maria Gadar, being a person over the age of 18 and otherwise competent to testify as to the matters set forth herein, declares as follows:

1. I was introduced to Pilates at the age of fifteen while a student at the Boston Ballet. After a career as a professional ballet dancer in the 1990s, I trained to teach Pilates. In 2000, I was certified as a teacher by Joseph Pilates' protégé, Romana Kryzanowska. I am the author of six books, *Pre-Pilates and Beyond*, *Discovering Joe Pilates*, *Pilates for Children*, *The Pilates Animals Workout*, *Pilates: An Interactive*

Workbook, and *Pilates: An Interactive Workbook, Wunda Chair Edition*, all of them available on Amazon.com.

2. On March 5, 2021, Sean Gallagher filed a DMCA takedown notice with Instagram, resulting in a takedown of the post shown below, which depicts the covers of three books, *Exercise, What It Is, What it Does*, by Carola S. Trier, *Return to Life*, by Joseph H. Pilates, and *The Joseph H. Pilates Archive Collection*, by Sean Gallagher and Romana Kryzanowska. The accompanying text to my post stated: “A few of my prized Pilates possessions: books from Romana, Joe, and Carola.”



3. On or about March 5, 2021, Sean Gallagher filed a DMCA takedown notice with Instagram, resulting in a takedown of the image shown below, which was posted with the following text regarding my work with children and a December 21, 2020, fundraiser that I held:

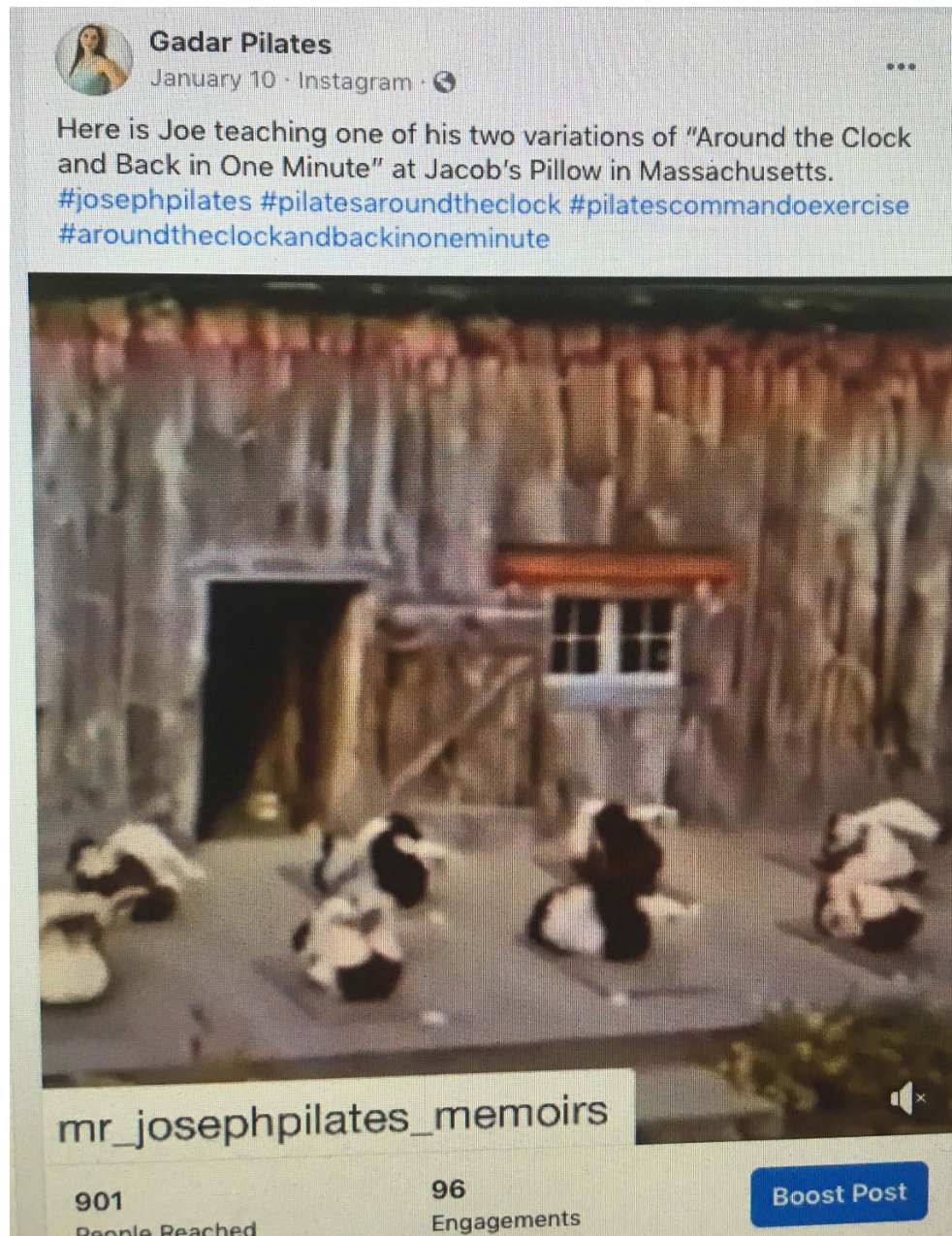
Joe and Romana taught kids and we can too. Join me Monday, December 21st at 8 am or 6 pm EST for a special PRO Class benefitting the Benjamin Gilkey Fund for Innovative Pediatric Cancer Research. The class was designed for

children but it is by no means a watered-down Pilates routine, so be prepared to move while learning some creative ways to present the Pilates moves to your younger clients and contributing to an important cause. Children are welcome to participate. DM to book.



4. The image of the boy with Mr. Pilates was taken from a flyer advertising the sale of “The Universal Reformer” that appears to be from the 1940s. A copy of the advertisement is attached below as Exhibit 1.

5. On or about March 5, 2021, Sean Gallagher filed a DMCA takedown notice with Instagram, resulting in a takedown of the post shown below, which contained a videoclip from an old film. As I stated in the post, it shows Joseph Pilates teaching one of his two variations of “Around the Clock and Back in One Minute” at Jacob’s Pillow in Massachusetts. The videoclip is from a DVD sold by a company called “Power Pilates,” which I know to be unrelated to Gallagher or his companies.



6. On or about April 21, 2021, I voluntarily removed the image reproduced below showing me with Anthony Rabara, a Pilates instructor who was certified to teach Pilates by Romana Kryzanowska in the mid-1980s. I removed the image because Mr. Gallagher threatened that he would file a DMCA takedown notice with Instagram based on the background, which shows – out of focus –

framed pictures of Joseph Pilates in various positions on the Reformer. The image of Anthony and me was taken in the Pilates studio of Romana Kryzanowska's granddaughter, Daria Pace.

7. Attached as Exhibit 2 below is an email from Richtone's attorney, Andrew Spence, to my attorneys, threatening to bring a copyright infringement suit against me for, among other things, "displaying without authorization my client's copyrighted images in the background..." The email was provided to me by my attorney. (See page 3 of Exhibit 2.)



I hereby state under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed at Sarasota, Florida, this ____day of October 2022.

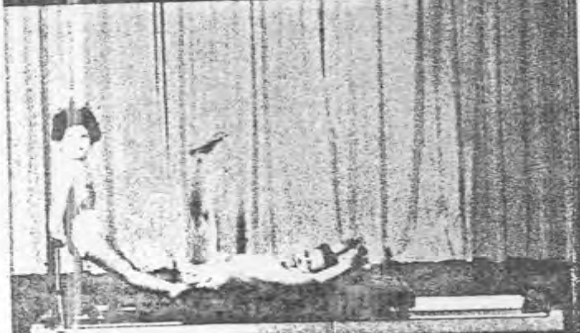
By: _____
Christina Maria Gadar

I hereby state under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed at Sarasota, Florida, this 29th day of October 2022.

By: Christina Maria Gadar
Christina Maria Gadar

Exhibit 1



The UNIVERSAL REFORMER

A complete gymnasium in itself, the Universal Reformer was developed during forty years of research and practice by Joseph H. Pilates, one of America's outstanding Physical Educators. But, it is more than just an exerciser. It is the answer to these important questions:

HOW to feel ALIVE...

"Feel like a million dollars", may be a trite expression but that wonderful, wonderful feeling of being alive which the phrase describes can be yours if you will use the Pilates Universal Reformer with earnestness and sincerity. Results that will be noticed, not only by yourself but by your friends and acquaintances, are easy to obtain. Follow the system conscientiously for one week and you will be convinced of the tremendous benefits the Reformer can offer you; benefits you will never again want to do without.

HOW to Slenderize your Body...

To reduce . . . to slenderize is the dearest wish of many. If it is yours, take courage. The Pilates Universal Reformer does this wonderfully well . . . and it goes further than just removing unwanted pounds. Those who follow the chart exactly will lose not only excessive weight but will develop properly proportioned muscles in the proper places on their bodily structure. Ted Shawn and Ruth St. Dennis, world famous dancers, use the Universal Reformer to control their weight, yet stay in the top physical condition largely responsible for their superb grace. No other system can offer these benefits and PROVE them.

HOW to stay "in the Pink"...

As a conditioner, no other single piece of gymnasium equipment will do as much, yet cost so little in keeping athletes in the pink. Be they professionals or high-school aged aspirants to the glory of sports, the Pilates Universal Reformer will accomplish wonders. It is the finest apparatus for self-help in the workout room or in the private home. The athlete who follows the chart will never be muscle bound for ALL muscles in the body come into use and are exercised properly. There is no need to explain this to Athletic Directors, Physical Educators and Dancing Teachers. A look at the chart of exercises and they will understand.

A COMPLETE COURSE-CHART OF EXERCISES IS INCLUDED WITH EVERY *Pilates* UNIVERSAL REFORMER

HOW to alleviate Muscular Ailments

The alleviation of muscular ailments is, perhaps, the outstanding feature of the Pilates Universal Reformer. As a mechano-therapy apparatus, it lends itself to exercises that bring about a most amazing improvement in circulation and is of considerable benefit in the alleviation of certain cases of asthma, migraine, arthritis and sacro-iliac pains. Its most remarkable success has been in the treatment of infantile paralysis and certain cases of partial paralysis resulting from accidents and disease. These claims are super-conservative and super-cautious, we assure you. Actual results by those who have studiously followed Pilates' chart of exercises for the Universal Reformer have been amazing. We will be glad to cite you actual cases and their histories.

While Joseph H. Pilates has experimented and developed physical educational apparatus and systems for more than a quarter of a century, none of his remarkable and patented devices has been offered for home use until *Now*.



Here are a few of the hundreds who know Pilates' equipment and system. World famous stars of stage, screen, opera and radio patronize the Pilates Studios in New York City. Among these, according to Pilates' list, are:

Willem Van Hoogstraaten
Yehudi Menuhin
Leopold Godowsky
G. J. Gershwin
Carmen Lombardo
Katherine Hepburn
Nancy Carol
Ruth St. Denis
Ted Shawn
Paul Draper
Dorothy Stone
Paula Stone
Le Morgan Trio
Argentinita
Antonio and Rosita
Clifton Webb
John Philip Sousa
Laura Harding
Gypsy Markoff
Nat Fleischer
Horst Paul Horst
Baron G. Hoyningen
Huene
Mr. & Mrs. Arturo L.
Willshaw
Mr. & Mrs. Jorge Ortiz
Linarez
Bachoo Dinsha
Rene Misteli

Mdme. E. Shiaparelli
Rhys Williams
Eddie Garr
Tullio Carminati
Ray Bramley
Ruby Mercer
Chester Bowles
Kenny Gardner
Cobina Wright, Sr.
Cobina Wright, Jr.
Peggy Guggenheim
Jess Meeker
John Rawlings
Princess Bali
John R. Terken
Martha Gellhorn
Dr. Harry King Stone
Dr. Joseph D. Montague
Dr. Frank Paul Tocci
Dr. Maximilian Ramirez
Dr. H. Rubenstein
Dr. Robert Wallis
Dr. Nancy Scley Duggan
Dr. Frederic E. Krug
Dr. Frederic Rand Rogers
Dr. Frank D. Fackenthal
Dr. Israel Weinstein
Dr. N. S. Wollf

JOSEPH H. PILATES

*Originator of the Pilates Method
of Bodily Development and De-
signer of The Universal Reformer.*

Dr. Frederick Rand Rogers, President of the North American Physical Fitness Institute, in a report to that organization says, "The Pilates Method commends itself to me as three to four times as efficient as any I have studied . . . And remember, when I say, 'three to four times as efficient', I am making an effort to be accurate."



ATTENTION

Physical Directors!

The Pilates Universal Reformer is one of the simplest, yet most useful pieces of apparatus for all-'round conditioning and corrective work obtainable. The following suggests some of the things it will do:

- 1—FOR GENERAL CONDITIONING AND BUILDING MUSCLE TONE
 - a—Strengthening and suppling muscle groups
 - b—Stretching and strengthening sinews of all body parts; full extension to all muscular movements
 - c—Stimulating circulation
 - d—Stimulating internal organs
 - e—Teaches rhythm and balance
- 2—FOR REDUCING
 - a—Through muscular activity . . . the natural way
 - b—Special exercises for reducing hips, waist line and legs
- 3—FOR CORRECTIVE WORK
 - a—Correcting posture defects . . . Kyphosis (round back), Lordosis, Scoliosis and flat back
 - b—Chicken breast, bow legs, falling stomach, flat feet (falling arches), poor circulation and elimination
- 4—FOR USE IN THE TRAINING ROOM
 - a—Stretching Atrophied muscles
 - b—Breaking adhesions
 - c—Correcting old knee, hip, back and ankle injuries
 - d—Stretching tendons and ligaments
 - e—Exercising joint injuries
 - f—Specialty work



How to Look

AND FEEL

Like a \$1,000,000

WITH THE
Pilates
**UNIVERSAL
REFORMER**
(No. 42—Junior Model)

Exhibit 2



Christina Gadar <gadarpilates@gmail.com>

FW: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

1 message

Cherry, Douglas A. <dcherry@shumaker.com>
To: Christina Gadar <gadarpilates@gmail.com>
Cc: "Staine, Christopher A." <cstaine@shumaker.com>

Wed, Apr 21, 2021 at 2:02 PM

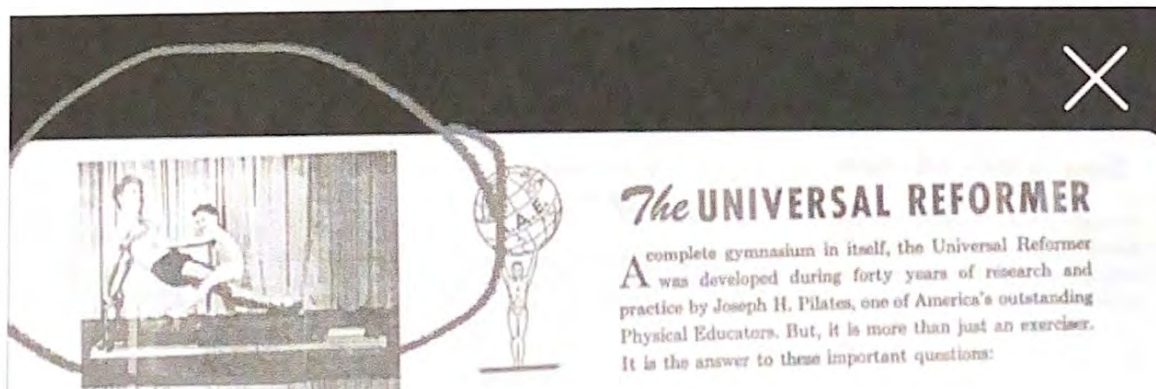
From: Cherry, Douglas A.
Sent: Wednesday, April 21, 2021 2:02 PM
To: 'Andrew Spence' <alsnyls97@yahoo.com>
Cc: Staine, Christopher A. <cstaine@shumaker.com>
Subject: RE: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Mr. Spence,

We have reviewed your client's continued demands and allegations of infringement and find them baseless. It appears the goal here is solely to simply harass and intimidate our client.

Our client's *Love All Around* image is a complete redesign devoid of any rational argument of infringement. Even if this image could be construed as a derivative work, you have provided no support whatsoever that the 1943 *Around the Clock* image is not in the public domain. Since our most recent communication, we have discovered further evidence that this image was published in 1943.

Regarding the image on page 7, this photograph was not even taken at our client's studio, but was from a visit to another instructor's studio. We understand the copies of the photographs were properly acquired and there would be no prohibition of their display. Regardless, we have discovered that Richtone has (yet again) improperly claimed that it has rights in a public domain image and fraudulently registered the work. We were able to discover through the New York public library that the photograph was published in an advertisement decades prior to your client's registration (VAU 00024067). See here:





HOW to feel ALIVE...

"Fast like a million dollars" may be a trite expression, but the Universal Reformer can offer you, benefits you will never again want to do without.



HOW to Slenderize your Body...

To reduce... to slenderize is the dream wish of many. If it is yours, take courage. The Pilates Universal Reformer does this wonderfully well... and it goes further than just removing unwanted pounds. Those who follow the chart exactly will lose not only excessive weight but will develop properly proportioned muscles in the proper places on their bodily structure. Ted Brown and Ruth St. Denis, world famous dancers, use the Universal Reformer to control their weight, yet stay in the top physical condition largely responsible for their superb grace. No other system can offer these benefits and PROVE them.



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As a condition, no other single piece of gymnasium equipment will do so much, yet cost so little in keeping athletes in the pink. For they professionals or high school aged aspirants to the glory of sports, the Pilates Universal Reformer will accomplish wonders. It is the best apparatus for self help in the workout room or in the private home. The athlete who follows the chart will never be muscle bound for ALL muscles in the body come into use and are exercised properly. There is no need to explain this to Athletic Trainers, Physical Educators and Dancing Teachers. A look at the chart of exercises and they will understand.

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athletic and muscular gains. Its most remarkable success has been in the treatment of infantile paralysis and certain cases of partial paralysis resulting from accidents and disease. Those claims are supported by many and supported constantly, no more true. Actual results by those who have studiously followed Pilates' chart of exercises for the Universal Reformer have been amazing. We will be glad to cite your actual cases and their histories.

While Joseph H. Pilates has experimented and developed physical educational apparatus and systems for more than a quarter of a century, none of his remarkable and patented devices has been offered for home use until now.



Some of those who know

Here are a few of the hundreds who know Pilates' equipment and system. World famous stars of stage, screen, opera and radio patronize the Pilates Studios in New York City. Among these, according to Pilates' list, are:

William Van Houten	M. E. H. H. H. H.
Yvonne Macdonald	Rhys Williams
Lampold Gadowsky	Edith Gier
J. J. Gier	Tullio Carminati
Caroline Lombardo	Roy Brander
Katherine Hepburn	Ruby Moser
Nancy Carol	Chas. Bowles
Ruth St. Denis	Kenny Gardner
Paul Brown	Edna Wright, Jr.
Paul Brown	Cubert Wright, Jr.
Paul Brown	Peggy Goggin
Le Morgan Tyne	Joan Moser
Agnes	John H. H. H.
Agnes	Princess Bull
Agnes	John H. H. H.
Agnes	Martha Gellhorn
Agnes	Dr. Harry Ring Stone
Agnes	Dr. Joseph D. Montague
Agnes	Dr. Frank Paul Toot
Agnes	Dr. Maximilian Ramirez
Agnes	Dr. H. Rubenstein
Agnes	Dr. Robert Wallis
Agnes	Dr. Nancy Riley Duggan
Agnes	Dr. Frederic E. Krug
Agnes	Dr. Frederic Hand Rogers
Agnes	Dr. Frank D. Fackenthal
Agnes	Dr. Israel Weinstein
Agnes	Dr. N. R. Wall

JOSEPH H. PILATES

Originator of the Pilates Method of Body Development and Designer of the Universal Reformer.

Dr. Frederick Hand Rogers, President of the North American Physical Fitness Institute, in a report to that organization says, "The Pilates Method commends itself to me as three to four times as efficient as any I have studied... And remember, when I say, 'three to four times as efficient' I mean, 'three to four times as efficient'."



ATTENTION

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- 1-POS GENERAL (GENERAL) AND BUILDUP MUSCLE TONE
 - a-Strengthening and suppling muscle groups
 - b-Stretching and strengthening sinews of all body parts; full extension to all muscular movements
 - c-Stimulating circulation
 - d-Stimulating internal organs
 - e-Teaches rhythm and balance
- 2-POS REDUCING
 - a-Through muscular activity... the natural way
 - b-Special exercises for reducing hips, waist line and legs
- 3-POS CORRECTIVE WORK
 - a-Correcting posture defects... Kyphosis (round back), Lordosis, Scoliosis and Flat back
 - b-Clipped breast, low legs, falling stomach, flat feet, falling arches, poor circulation and elimination
- 4-POS USE IN THE TRAINING ROOM
 - a-Stretching Atrophied muscles
 - b-Stretching adhesions
 - c-Correcting old knee, hip, back and ankle injuries
 - d-Stretching tendons and ligaments
 - e-Exercising joint injuries
 - f-Specialty work



How to Look

AND FEEL

Like a \$1,000,000

WITH THE
Pilates
UNIVERSAL
REFORMER
(No. 4-Junior Model)

Reply...

...

We have also further discovered that your prior Instagram DMCA Takedowns were improper, subjecting your client to liability. All posts were either a fair use or of a public domain work (see example above). Frankly, we would have thought Mr. Gallagher would have learned from his involvement in a class action lawsuit to avoid overreaching intellectual property claims.

We are frankly shocked at your client's unethical, petty and harassing conduct in this manner. Our client desires to avoid any further entanglements/dealing with your client and does not wish to enter into a sham license agreement. Without any admission of wrongdoing, our client has removed the posts at issue for the time being. Our client reserves all rights and remedies.

Please govern yourself accordingly.

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Friday, April 16, 2021 7:24 AM
To: Staine, Christopher A. <cstaine@shumaker.com>
Cc: Cherry, Douglas A. <dcherry@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Mess'rs. Staine and Cherry:

Attached are some screen images obtained from your client's Instagram account earlier this week.

These are infringing images. Your client may either remove them or enter into an agreement with my client.

Pages 1 and 2 - a number of the images as they initially appear on the screen on Gadar Pilates' Instagram page.

Page 3 - the new variation of the derivative image. My client has expressed a willingness to license this royalty free and without attribution.

page 4 - Ms. Gadar complaining about being bullied by my client.

page 5 - Ms. Gadar encouraging others to infringe on my client's intellectual property rights upon the advice of counsel.

pg 6 - Ms Gadar posting the image and explaining how Romana identified the exercises associated with it.

page 7 - Ms. Gadar displaying without authorization my client's copyrighted images in the background registered under VAU 00024067.

My client remains willing to discuss how the images can be displayed under the license if your clients come to the table by Thursday April 22nd, 2021 by 6 pm. If your clients would prefer, they can permanently pull all of the above material by the same date and perform diligent efforts thereafter to ensure similar material is not available through any of their media channels.

Otherwise my client will move forward with other remedies under the Copyright Act and the Lanham Act.

Sincerely,
Andrew L. Spence
(914) 261-5254

On Wednesday, March 31, 2021, 1:45:10 PM EDT, Staine, Christopher A. <cstaine@shumaker.com> wrote:

Mr. Spence-

Again, none of the links is functioning. However, having had an opportunity to review the items attached to your email and based on the contents of those attachments, we do not see any basis for a viable copyright claim.

At this stage, given your bad faith claims and unsupported threats, our client has simply decided to put this behind her and will not be using the redesigned public domain image in any commercial manner. We trust this concludes this matter.

Regards,

Chris

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Tuesday, March 30, 2021 7:57 PM
To: Staine, Christopher A. <cstaine@shumaker.com>; Cherry, Douglas A. <dcherry@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Mssrs. Staine and Cherry:

<https://www.instagram.com/stories/highlights/17892955408854697/>

infringed by displaying an image registered under copyright # TX0008720096

(see attached)

<https://www.instagram.com/p/B7WkGo3A8CB/>

infringed by displaying an image registered under copyright # TX0008720096

(see attached)

<https://www.instagram.com/p/CI8Zw1Fg19w/>

infringed by displaying an image registered under copyright # VAu000242067

(see attached)

<https://www.instagram.com/p/CJ4RTwXAJSW/>

infringed by displaying a video clip registered under copyright # PAu003062939

Your client's proposed image infringes upon Richtone's active trademarks.(See Attached)

If you or your client feels more evidence is necessary before discussing the proposed royalty free licensing arrangement, this will likely require a more formal process and the royalty free portion of the license will no longer be available. Richtone requires a positive response by 6 pm Wednesday April 14th, 2021.

Sincerely,

Andrew L. Spence

On Thursday, March 25, 2021, 12:29:59 PM EDT, Cherry, Douglas A. <dcherry@shumaker.com> wrote:

Mr. Spence,

Your response isn't helpful. We have no idea what items you are referring to. Merely because you issued DMCA takedown requests does not indicate that such request was proper, or that there was an infringement of your client's rights.

Do you have screenshots of the pages before the links were removed? If so, please share. Can you please provide copies of the relevant deposits of the copyright registrations? We are trying to evaluate your client's claim.

It strikes us that your client is trying to force a license for public domain work based on a threat of litigation for unrelated matters.

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Wednesday, March 24, 2021 7:38 PM
To: Staine, Christopher A. <cstaine@shumaker.com>; Cherry, Douglas A. <dcherry@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Mr. Staine:

Yes, all the links had the information removed, pursuant to a DMCA takedown request.

Andrew Spence

On Tuesday, March 23, 2021, 9:08:15 AM EDT, Staine, Christopher A. <cstaine@shumaker.com> wrote:

Mr. Spence-

None of the links contained in your email are working links. Please verify and resend at your earliest opportunity.

Thank you,

Chris

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Monday, March 22, 2021 7:23 PM
To: Cherry, Douglas A. <dcherry@shumaker.com>; Staine, Christopher A. <cstaine@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Mssrs. Staine and Cherry:

Richtone has provided you with the web addresses where your client infringed:

<https://www.instagram.com/p/CJ4RTwXAJSW/>
<https://www.instagram.com/stories/highlights/17892955408854697/>
<https://www.instagram.com/p/B7WkGo3A8CB/>
<https://www.instagram.com/p/Ci8Zw1Fg19w/>

and the registration numbers of what your client infringed upon:

PAu003062939

TX0008720096

VAu000242067

What additional information do you or your client need to ascertain that a royalty free license in exchange for a release of these and other potential liabilities is probably a good idea?

Sincerely,

Andrew L. Spence

On Wednesday, March 17, 2021, 9:41:34 AM EDT, Staine, Christopher A. <cstaine@shumaker.com> wrote:

Mr. Spence-

We are in receipt of your email and I write to you in response. As a threshold matter, I've noted that we've now requested documents and information supporting you and your clients' assertions that our client's use of the subject work would be an infringement of Mr. Gallagher's and/or Richtone's rights, something we believe should not only be simple to produce, but that you'd actually want to produce to us, especially in light of your incessant threats of escalating this dispute. Yet despite our repeated invitations, you have continued to refuse to produce anything whatsoever, relying instead on innuendo and threats.

To be very clear here, I am imploring you to provide us with the documents and information we've requested. If you believe you've already furnished us and our client with sufficient information, please direct our attention to the information you believe sufficiently apprises us of your client's intellectual property rights. We do indeed remain committed to an amicable resolution to this dispute, but you and your client's refusal to provide us with the requested information makes it a near impossibility to make any meaningful progress in discussing a resolution, both with our own client and with you. If your client is equally as committed to achieving a resolution, it would stand to reason that you and your client would want us to have this information. After all, such information, to the extent it does in fact exist, would be foundational to any settlement discussions.

Going forward, I would respectfully ask that you please refrain from making any further threats of litigation or taking "other means to resolve this problem" if you are unwilling to cooperate in an amicable discussion towards a resolution. Such statements aren't the least bit charitable, nor do they move us any closer towards a resolution. With that, please forward the requested information at your earliest opportunity, and upon our receipt, we will diligently follow up with our client and will promptly respond to your client's proposal.

Sincerely,

(7)

Chris Staine

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Tuesday, March 16, 2021 7:35 PM
To: Cherry, Douglas A. <dcherry@shumaker.com>
Cc: Staine, Christopher A. <cstaine@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Doug:

Richtone has provided you and your client with sufficient information to make an informed decision. Richtone asks that your client respond to the proposal on the table or it will be forced to take other means to resolve this problem.

Andy

On Friday, March 12, 2021, 11:50:39 AM EST, Cherry, Douglas A. <dcherry@shumaker.com> wrote:

Andy,

Thank you for your email. We have forwarded to our client, but as a threshold matter, I would reiterate my prior request for documents and information supporting you and your clients' assertions that our client's use of the subject work would be an infringement of Mr. Gallagher's and/or Richtone's rights. While we remain committed to seeking an amicable resolution to this matter, it is imperative that we receive this information from you so we can better understand whether our client's use of the subject work is improper. This is foundational to any settlement agreement between our clients.

Furthermore, having relayed your clients' proposal, we would vehemently disagree there has been any defamation, disparagement or infringement of any nature on behalf of our client whatsoever. Simply because a post was removed is not evidence of wrongdoing, and may constitute fraudulent DMCA takedown request. Such spurious allegations only serve to diminish our shared desire to resolve the intellectual property matters at issue here.

Again, please provide your basis/support, including any copyright or trademark registration(s) you believe to be relevant to this discussion. It is imperative that we have this information in order to more carefully consider the terms of your client's proposal (with the exception of the defamation component for the reason stated above). We look forward to hearing further from you and to receiving the requested supporting information.

Regards,

Doug

(8)

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Thursday, March 11, 2021 4:00 PM
To: Cherry, Douglas A. <dcherry@shumaker.com>
Cc: Staine, Christopher A. <cstaine@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Dear Mr. Cherry:

In response to your March 5th, 2021 email: I propose the following:

My client would agree to a royalty free, no license/source attribution on the product, license with the following conditions:

1. Your client and its principal may use only a variation of the first of the two revised images you showed me. The one with "Love All Around" running horizontally through the center of the image. The variation would be to extend this central "Love All Around" all the way out just past the outer edge of the image, past the encircling "Love All Around"s. Your client may have it overlay the encircling words or simply replace them at her option.
2. Your client and its principal agrees as part of the written license agreement to acknowledge the image is a derivative work of Richtone's intellectual property and to recognize all of Richtone's and its principal's intellectual property rights and to not post, use, create derivative works, trademark or otherwise infringe or utilize the intellectual property of Richtone or its principal without the express written permission of Richtone or its principal. Such requests shall be directed through Mr. Spence.
3. Your client and its principal agrees to refrain from defaming or otherwise making negative remarks regarding Richtone and its principal.
4. Your client its principal only acknowledge the license if specifically asked about the origins of the logo or if specifically asked if they have a license with Richtone.

In exchange for the above, in addition to the royalty free license, Richtone and its principal would agree to release your client and its principal from any liability for defaming Mr. Gallagher or Richtone on or prior to March 5th, 2021 and for your client's or its principals repeated infringement, prior to March 5th, 2021, of Richtone's and it principal's copyright interests as evidenced by the following posts, since removed:

<https://www.instagram.com/p/CJ4RTwXAJSW/>
infringed upon the copyright registered under PAu003062939

<https://www.instagram.com/stories/highlights/17892955408854697/>
infringed upon the copyright registered under TX0008720096

<https://www.instagram.com/p/B7WkGo3A8CB/>
infringed upon the copyright registered under TX0008720096

<https://www.instagram.com/p/Ci8Zw1Fg19w/>
infringed upon the copyright registered under VAu000242067

Please advise at your earliest convenience if this would be acceptable to your client and its principal. This email is sent without prejudice and without waiving any of Richtone's or Mr. Gallagher's rights or defenses, all of which are expressly reserved.

Sincerely,
Andrew L. Spence

(914) 261-5254

On Tuesday, March 9, 2021, 8:09:28 AM EST, Cherry, Douglas A. <dcherry@shumaker.com> wrote:

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Thank you.

From: Andrew Spence <alsnyls97@yahoo.com>
Sent: Tuesday, March 09, 2021 7:57 AM
To: Cherry, Douglas A. <dcherry@shumaker.com>
Cc: Staine, Christopher A. <cstaine@shumaker.com>
Subject: Re: Gadar, Inc. - Gallagher/Richtone Design Group, LLC matter

Mr. Cherry:

Richtone hopes to have a response to the below by the end of this week.

Sincerely,

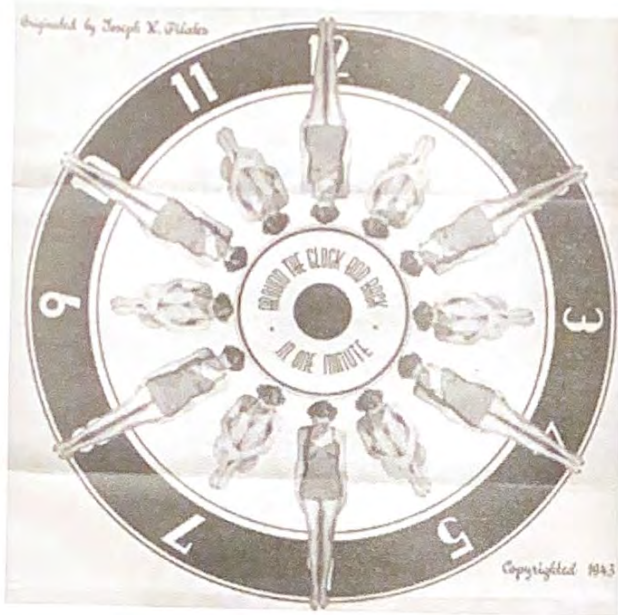
Andrew L. Spence

On Friday, March 5, 2021, 11:19:29 AM EST, Cherry, Douglas A. <dcherry@shumaker.com> wrote:

Hi Andy,

It was a pleasure speaking with you this morning. As stated, our firm is intellectual property counsel to Gadar, Inc. ("Gadar").

As discussed, we believe the following work is in the public domain since it was created and published on or around 1943 (as evidenced by the copyright notice), and we are not able to locate any record that it was copyright registered at such time.



Inspired by this public domain work, our client, with substantial effort and expense, has created the following artwork. Please note the artwork has been further revised since you and your client last viewed it as a good faith effort to amicably resolve this matter:



As stated, my client is not using this in a trademark manner (i.e. as a source identifier of its business).

It is our understanding that your client has asserted that use of such work would be an infringement of his/its rights. However, we are struggling to understand this given the fact that any elements utilized in the work are in the public

domain. Please provide your basis/support for this assertion, including any copyright or trademark registration(s) which you believe would be relevant.

Please note that our client is mindful and respectful of a party's intellectual property rights. However, based on the information currently in our possession, we feel your client's position is unsupportable. This email is sent without prejudice and without waiving any of Gadar's rights or defenses, all of which are expressly reserved.

We appreciate your client's efforts to resolve this matter. I look forward to hearing from you. Please feel free to contact me if you would like to discuss this matter further.

Regards,

Doug

Douglas A. Cherry | Shumaker

Attorney at Law

Board Certified in Intellectual Property Law

240 South Pineapple Avenue, Suite 1000 | Sarasota, Florida 34236

P.O. Box 49948 | Sarasota, Florida 34230-6948

Direct 941.364.2738 | Fax 941.366.3999

dcherry@shumaker.com | bio | LinkedIn

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Christopher A. Staine | Shumaker

Attorney at Law

Board Certified in Construction Law

240 South Pineapple Avenue, Suite 1000 | Sarasota, Florida 34236

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cstaine@shumaker.com | bio | LinkedIn

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